

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

FRANK D. SEINFELD, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 1100-N  
 )  
 VERIZON COMMUNICATIONS, INC., )  
 )  
 Defendant. )

***MEMORANDUM OPINION AND ORDER***

**Submitted: October 25, 2005**

**Decided: November 23, 2005**

Robert D. Goldberg, Esquire, BIGGS & BATTAGLIA, Wilmington, Delaware;  
Irving Bizar, Esquire, A. Arnold Gershon, Esquire, BALLON STOLL BADER &  
NADLER, P.C., New York, New York, *Attorneys for the Plaintiff.*

Edward P. Welch, Esquire, Michael A. Barlow, Esquire, SKADDEN ARPS  
SLATE MEAGHER & FLOM, LLP, Wilmington, Delaware, *Attorneys for the  
Defendant.*

LAMB, Vice Chancellor.

A stockholder filed an action pursuant to Section 220 of the Delaware General Corporation Law seeking to compel inspection of books and records related to three senior executives' compensation that he claims is excessive and wasteful. To support the propriety of his purpose, the stockholder alleges that the three executives were all functioning in the same job and were paid amounts above the minimum requirements in their employment contracts. On cross-motions for summary judgment, the record, including the plaintiff's own deposition, fails to reveal any substantial factual basis to support the alleged mismanagement or waste. Therefore, the court concludes, viewing the evidence in the light most favorable to the stockholder plaintiff, that he has not met his evidentiary burden under Section 220 to demonstrate a proper purpose to justify the inspection.

## I.

Verizon Communications, Inc. is a Delaware corporation. Frank D. Seinfeld, the plaintiff, is a purported beneficial owner of approximately 3,884 shares of Verizon, held in street name through a brokerage firm.<sup>1</sup>

On January 28, 2005, Seinfeld sent a written demand in compliance with 8 *Del. C.* § 220 to Verizon, seeking to inspect and make copies of Verizon's books, records, and minutes of its board meetings, claiming that Verizon overcompensated its three top executives. Specifically, Seinfeld alleges that he is concerned that

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<sup>1</sup> Tr. Ex. A.

these executives were paid compensation far in excess of the minimum amounts that they were entitled to receive under their employment contracts.<sup>2</sup> In particular, the plaintiff claims that during 2000-2002, Ivan G. Seidenberg, Lawrence P. Babbio, Jr., and Charles R. Lee “received total compensation of \$205 million, ostensibly performing the same services as co-chief executives.”<sup>3</sup> According to the plaintiff, “to have three co-chief executive officers running one enterprise and having each receiving such extraordinary compensation is unusual.”<sup>4</sup>

Additionally, the plaintiff contends that Verizon’s long-term bonus plan under which options were granted was “conveniently” amended shortly after at least two of the three employment contracts were entered into and that this amendment caused an increase in the executives’ total compensation packages.<sup>5</sup> In effect, the plaintiff claims that the directors committed corporate waste when they gave excessive compensation packages to the executives, including excessive option grants.<sup>6</sup>

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<sup>2</sup> Seinfeld Dep. 17-18 (“I’m concerned with the amounts because according to what I’ve read here, there were minimum amounts that should be received as bonuses. And this is considerably more than the maximum stated. And I’m surprised there’s no maximum stated. But let’s talk about the minimum. The, the amounts received were considerably more. And I’d like to know on what basis those higher amounts were given out.”).

<sup>3</sup> Mem. in Supp. of Pl.’s Mot. for Summ. J. 1.

<sup>4</sup> *Id.*

<sup>5</sup> Pl.’s Br. in Supp. of Mot. for Summ. J. 2. According to the plaintiff’s brief, “the long term bonus plan, under which the ‘compensation’ in options was paid, was amended in January 2001. How very convenient. Were the extravagant bonus provisions inserted in the contracts with the view that shortly afterwards, the long term bonus plan would be amended, thus making those provisions even more exceedingly valuable?”

<sup>6</sup> The plaintiff also asserted in his opening brief that the executives were granted options in violation of their employment agreements. However, in his deposition he replied that there was

On February 7, 2005, Verizon refused the demand. Seinfeld filed suit on February 15, 2005. On July 28, 2005, Seinfeld moved for summary judgment, submitting several affidavits in support of his motion, including his own. After Seinfeld resisted giving a deposition, the court ordered that he be deposed. Thereafter, Verizon cross-moved for summary judgment, arguing that Seinfeld had not shown a credible basis to infer wrongdoing or mismanagement in Verizon's compensation of its executives. The court heard argument on the cross-motions on October 25, 2005.

## II.

Section 220 sets out the procedure that a stockholder must follow in order to be entitled to inspect a corporation's books and records.<sup>7</sup> Such stockholder must first establish that (1) he, she, or it is a stockholder, (2) he, she, or it has complied with the section respecting the form and manner of making demand for inspection of such documents, and (3) the inspection such stockholder seeks is for a proper purpose.<sup>8</sup> "The paramount factor in determining whether a stockholder is entitled to inspection of corporate books and records is the propriety of the stockholder's

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no doubt in his mind that the executives were entitled to receive the stock options under their employment agreements. Seinfeld Dep. 42-44, 52, 60. This claim was then re-stated by the plaintiff in a later brief, "he is concerned with the contracts for their failure to provide expressly for options, the failure to set limits to option grants and the options granted thereunder."

<sup>7</sup> Section 220 was recently amended to allow beneficial owners, such as the plaintiff in this case, a right of inspection.

<sup>8</sup> 8 *Del. C.* § 220.

purpose in seeking such inspection.”<sup>9</sup> Section 220 defines a proper purpose as one “reasonably related to such person’s interest as a stockholder.”<sup>10</sup>

While it is well established that an investigation into corporate waste and mismanagement is a proper purpose for books and records inspection under Section 220, a mere suspicion of wrongdoing, such as the claim the plaintiff is making in this action, is insufficient.<sup>11</sup> The statute places the burden of proving a proper purpose on the stockholder who seeks inspection of the company’s books and records.<sup>12</sup> This burden is not insubstantial, and “mere curiosity or a desire for a fishing expedition will not suffice.”<sup>13</sup> The stockholder must “present some credible basis from which the court can infer that waste or mismanagement may have occurred.”<sup>14</sup> Although the plaintiff does not have to prove actual wrongdoing, “a mere statement of a purpose to investigate possible general mismanagement, without more, will not entitle a shareholder to broad Section 220 inspection relief.”<sup>15</sup>

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<sup>9</sup> *CM & M Group, Inc. v. Carroll*, 453 A.2d 788, 792 (Del. 1982).

<sup>10</sup> 8 *Del. C.* § 220 (b).

<sup>11</sup> *Security First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 568 (Del. 1997); *Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1031 (Del. 1996).

<sup>12</sup> 8 *Del. C.* § 220(c) (placing the burden of proving proper purpose on the stockholder when he seeks inspection of records other than the corporation’s stock ledger or list of stockholders).

<sup>13</sup> *Security First*, 687 A.2d at 568.

<sup>14</sup> *Thomas & Betts*, 681 A.2d at 1031.

<sup>15</sup> *Security First*, 687 A.2d at 568 (citing *Helmsman Mgmt. Servs. v. A&S Consultants, Inc.*, 525 A.2d 160, 166 (Del. Ch. 1987)); *Thomas & Betts*, 681 A.2d at 1032 (explaining that the plaintiff’s subjective belief that wrongdoing has occurred is insufficient to meet the evidentiary burden required to compel inspection).

On a motion for summary judgment pursuant to Rule 56, judgment will be granted where the moving party demonstrates that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law.<sup>16</sup> When determining whether to grant summary judgment, a court must view the facts in the light most favorable to the nonmoving party.<sup>17</sup>

### III.

Seinfeld filed this Section 220 action so that he could investigate why the three executives received total compensation in amounts that he alleges exceeded \$200 million. Seinfeld does not allege facts challenging the process by which these compensation decisions were made.<sup>18</sup> Rather, he and his complaint appear to focus principally on the fact that the actual compensation amounts paid exceeded the minimum amounts specified by contract. For example, the complaint alleges that the amounts paid to two of the three executives in base salary in most years exceeded the minimum amounts due under their contracts. Moreover, one executive is alleged to have received option grants far in excess of the minimum grants specified in his contract. The complaint also alleges that the other two executives were awarded stock options despite the fact that their employment

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<sup>16</sup> *Scureman v. Judge*, 626 A.2d 5, 10 (Del. Ch. 1992).

<sup>17</sup> *Haas v. Indian River Volunteer Fire Co.*, 2000 Del. Ch. LEXIS 116, \*11 (Del. Ch. Aug. 14, 2000), *aff'd*, 768 A.2d 469 (Del. 2001).

<sup>18</sup> Seinfeld Dep. 34.

Q. And you're not personally challenging the process through which the compensation decisions were made?

A. Not at this time.

contracts do not expressly provide for option grants. Colorfully, the complaint appears to allege (and Seinfeld's briefs repeat the claim) that these three executives were actually all paid to do the same job.<sup>19</sup>

Not surprisingly, Seinfeld was unable to provide any factual support for this assertion at his deposition.<sup>20</sup> At his deposition, Seinfeld similarly conceded that he has no basis in fact to allege the executives "did not earn" the amounts paid to them under their employment agreements.<sup>21</sup> He also conceded, in effect, that he has no facts establishing a credible basis of any violation of the duties of loyalty or care in the directors' approval of these executives' compensation.<sup>22</sup> All Seinfeld was able to say at his deposition is that he is concerned about the large amounts paid to the three executives in compensation.<sup>23</sup> In sum, Seinfeld offers no evidence

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<sup>19</sup> Compl. ¶ 6 ("For a telephone company to have had one \$25 million-a-year CEO is bad enough, but to have had three, is intolerable.").

<sup>20</sup> In 2000, following the acquisition of GTE Corporation by Bell Atlantic Corporation, the latter of which was renamed Verizon, Lee and Seidenberg were named co-CEOs of Verizon. They served as co-CEOs for a period of less than two years, and, in April 2002, Seidenberg became the sole CEO of Verizon. At no time did Verizon have three co-CEOs. Babbio served as President and Vice Chairman, but has never been the CEO of Verizon. Seinfeld Dep. 102-103.

Q. Now, as you sit here today, do you have any evidence that Mr. Lee or Mr. Seidenberg ever did identical or duplicative work?

A. I don't have any evidence, no.

<sup>21</sup> Seinfeld Dep. 63.

Q. Do you have any reason, as you sit here today, to believe that they didn't earn the benefits under the contract?

A. No. I don't have anything at this point.

<sup>22</sup> Seinfeld Dep. 33-35.

<sup>23</sup> Seinfeld Dep. 19.

Q. So your concern is the excessive monies?

A. Yes.

Q. And that's it?

A. Yes.

from which the court could evaluate whether there is a reasonable ground for suspicion that the executives' compensation rises to the level of waste.<sup>24</sup>

Furthermore, Seinfeld's claim that Verizon's long-term bonus plan was "conveniently" amended to provide the executives with more valuable stock options is purely speculative.<sup>25</sup> Seinfeld did not submit any evidence showing that the executives were not entitled to these options or that any amendments to the plan were intended to improperly benefit them.<sup>26</sup> Simply stated, Section 220 does

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And, further at 105.

Q. Do you have any information, other than what was provided, obviously, in the various proxy materials which you read, with respect to the work that they were doing?

A. I don't know what work they were doing. These, these jobs, these positions are very flexible timewise and value-wise; and whatever they do they can do various things. I don't know- I go back to the, to the same thing. I don't know if they- what they did, actually did to, to earn the, the amounts given. The contracts provide for all this; I understand that. But that doesn't mean that they did it.

Q. And you have no reason to believe that they didn't do it?

A. I don't have any reason that they didn't. But I'd like to see something to show me that they did.

<sup>24</sup> The only explanation for the derivation of the amounts of compensation alleged in the complaint is found in an affidavit of counsel stating that he asked an expert, who did not submit an affidavit, to compute the valuations using the variables disclosed by Verizon in its filings with the Securities and Exchange Commission. This affidavit does not disclose the expert's work or otherwise explain how Seinfeld or his counsel derived the \$205 million figure for total compensation purportedly received by the executives.

<sup>25</sup> The court cannot reasonably find, based on the plaintiff's conclusory allegations, unsupported by evidence, that the board members conspired to amend the executives' compensation agreements to provide them with more valuable options. Moreover, the options about which the plaintiff complains have never been exercised and are all currently out-of-the money. Toohey Aff. ¶ 3.

<sup>26</sup> Seinfeld Dep. 70-76, 80-87. The executives' employment agreements, which were approved by Verizon's stockholders in 2001, provided for an award of stock options pursuant to Verizon's long-term incentive plan. This incentive compensation was a bonus program administered by the human resources committee of Verizon's board.

not permit a plaintiff to inspect the books and records of a company based on wholly unsupported allegations or mere suspicions.

Similarly, it is not enough under Section 220 for Seinfeld to state that he disagrees with the business judgment of Verizon's board of directors.<sup>27</sup> A mere difference of opinion with the board's human resource committee's compensation decision does not evidence wrongdoing and will not satisfy Seinfeld's burden. Accordingly, even viewing the evidence in the light most favorable to Seinfeld, the court must conclude that he has not carried his burden of showing that there is a credible basis from which the court can infer that the Verizon board of directors committed waste or mismanagement in compensating these three executives during the relevant period of time.<sup>28</sup> Instead, the record clearly establishes that Seinfeld's Section 220 demand was made merely on the basis of suspicion or curiosity.

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<sup>27</sup> *Marathon Ptnrs. L.P. v. M&F Worldwide Corp.*, 2004 Del. Ch. LEXIS 101, \*11 (Del. Ch. 2004) ("Stockholders cannot satisfy this burden merely by expressing disagreement with a business decision.").

<sup>28</sup> *Security First*, 687 A.2d at 568 (explaining that this threshold may be satisfied by a credible showing, through documents, logic, testimony, or otherwise, that there are legitimate claims of corporate mismanagement); *Brehm v. Eisner*, 746 A.2d 244, 266-267 (Del. 2000); *Helmsman*, 525 A.2d at 166 (explaining that there must be some evidence of possible mismanagement as would warrant further investigation of the matter in order to receive Section 220 inspection relief).

#### **IV.**

For the foregoing reasons, the court finds that the plaintiff has not met the statutory requirements of Section 220. Thus, the plaintiff's motion for summary judgment is DENIED and the defendant's cross-motion for summary judgment pursuant to Rule 56 is GRANTED. IT IS SO ORDERED.